act shall commence on the second Monday in January following the date of their election.

SEC. 55. The representatives provided for in this act shall be elected at the general election to be held on the first Tuesday after the first Monday in November 1958, and every two years thereafter.

SEC. 56. Census tracts referred to herein are all the political divisions, subdivisions, census tracts and other terms to describe census divisions used in the current census division system used and approved by the United States Bureau of the Census of the United States Department of Commerce and the detailed descriptions of said divisions together with detailed maps are on file and available in the Office of Population Research and Washington State Census Board or United States Bureau of Census and the boundaries of census tracts referred to herein are the same boundaries as are shown upon the official documents or maps maintained by or for the United States Bureau of the Census existing as of January 1, 1956, having the same corresponding numbers or names as given to census political divisions.

SEC. 57. Any Census tract (division) not specifically mentioned or included within the boundaries of any senatorial and representative district, and which is completely surrounded by territory embraced within a particular senatorial and representative district, shall be and become a part of such senatorial and representative district. In case any such Census tract (division) is not completely surrounded

by territory embraced within a particular senatorial and representative district, the Census tract (division) shall be and become a part of the senatorial and representative district having the smallest number of electors and having territory adjoining or contiguous to such Census tract (division) in the same county in which the Census tract (division) is located.

SEC. 58. Chapter 2, Laws of 1931; chapter 20, Laws of 1933; chapter 74, Laws of 1933; chapter 221, Laws of 1951; and RCW 44.04.020, 44.04.110, 44.08.010, 44.08.020, 44.08.060, 44.08.061, 44.12.010, and 44.12.020 are each repealed: *Provided*, That this initiative shall not in any way affect the membership, districts or other organization of the thirty-fifth legislature nor abolish nor shorten any term of office of any member of the Legislature commenced prior to the effectiveness of this initiative.

Filed in the office of the Secretary of State February 16, 1956.

Passed by vote of the people November 6, 1956 at the general election.

Proclamation signed by the Governor December 6, 1956.

APPENDIX E

SESSION LAWS, 1957, CHAPTER 289.

[Sub. S. B. 374.]

LEGISLATIVE REAPPORTIONMENT AND REDISTRICTING.

AN ACT relating to the state legislature and legislative districts; defining forty-nine senatorial and representative districts; creating three new legislative districts; providing for the number and apportionment of the members of the legislature; increasing the membership of the state senate by three members; repealing certain acts in conflict therewith; amending sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 21, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 57 and 58, chapter 5, Laws of 1957; and repealing section 56 of said chapter and re-enacting all other sections of said chapter.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 1, chapter 5, Laws of 1957 is re-enacted to read as follows:

At the general election to be held in 1958, and every four years thereafter, a senator shall be elected for a term of four years from the following senatorial districts:

Second, sixth, seventh, eighth, thirteenth, fifteenth, twenty-first, twenty-sixth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh and forty-eighth.

In all other senatorial districts a senator shall be elected in 1960, and every four years thereafter, for a term of four years: *Provided*, That in the forty-ninth district a senator shall be elected in 1958

for a term of two years and thereafter the term shall be for four years.

SEC. 2. Section 2, chapter 5, Laws of 1957 is reenacted to read as follows:

The senate shall consist of forty-nine members, one of whom shall be elected from each of the forty-nine senatorial districts, constituted as set forth in sections 3 through 51 of this act.

SEC. 3. Section 3, chapter 5, Laws of 1957 is reenacted to read as follows:

First—the counties of Okanogan and Douglas.

SEC. 4. Section 4, chapter 5, Laws of 1957 is amended to read as follows:

Second—the counties of Stevens and Pend Oreille.

SEC. 5. Section 5, chapter 5, Laws of 1957 is amended to read as follows:

Third—the following precincts in the city and county of Spokane: 310, 324, 359, 360, 364, Ada, Agatha, Alvin, David, Davis, Diana, Dodd, Dominion, Dover, Drumheller, Dwight, Eagle, East Hillyard, Echo, Eden, Edison, Edith, Egypt, Eldorado, Elgin, Eli, Ellen, Ellwood, Emerald, Emerson, Ensign, Erie, Ermina, Essex, Ethel, Euclid, Eureka, Evans, Eve, Exchange, Riverside, Spokane 1, Spokane 2, Spokane 3, Spokane 4, Spokane 5, Spokane 6, Spokane 7, and Spokane 8.

SEC. 6. Section 6, chapter 5, Laws of 1957 is amended to read as follows:

Fourth—the following precincts in the city and county of Spokane: 413, 414, 423, 439, 440, Abigail, Acme, Adolph, Advance, Airport, Albert, Alki, Allen, Andrew, Arrow, Ashley, Athens, Atlanta, Carnhope, Chester, Colbert, Corbin, Dishman, Doak, East Spokane, Edgecliff 1, Edgecliff 2, Evergreen, Fairfield, Fancher, Foothills, Freeman, Glenrose, Greenacres, Irvin, Latah, Liberty Lake, Marita, Mead, Mica, Millwood, Moab, Moran, Mt. Hope, Opportunity 1, Opportunity 2, Opportunity 3, Orchard 1, Orchard 2, Orchard 3, Otis, Pasadena, Pleasant Prairie, Raymond, Rock Creek Valley, Rockford, South Moran, Trentwood, University, Valleyford, Vera, Woodruff 1, and Woodruff 2.

SEC. 7. Section 7, chapter 5, Laws of 1957 is amended to read as follows:

Fifth—the following precincts in the city and county of Spokane: 501, 502, 504, 505, 506, 507, 511, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, Airway Heights, Blanchard, Buckeye, Chattaroy, Cheney 1, Cheney 2, Cheney 3, Cheney 4, Coulee, Deep Creek, Deer, Deer Park North, Deer Park South, Denison, Duncan, Earl, East Chattaroy, East Cheney, East Marshall, Elk, Elliott, Espanola, Excelsior, Five Mile, Four Lakes, Garden Springs, Graves, Green Bluff, Marshall, Medical Lake 1, Medical Lake 2, Milan, Mt. Spokane, Newman Lake, Nine Mile, North Colbert, Peone, Pioneer, Plaza, Rock Lake, South Fairfield,

South Spangle, Spangle, Spence, Stevens, Tyler, Waverly, Wayside, West Cheney, West Spokane, Wells, Whitworth 1, Whitworth 2, and Whitworth 3.

SEC. 8. Section 8, chapter 5, Laws of 1957 is amended to read as follows:

Sixth—the following precincts in the city and county of Spokane: 424, 425, 426, 429, 431, 433, 434, 435, 436, 437, 438, 442, 443, 621, 622, 623, 624, Abbott, Acorn, Alameda, Alice, Altamont, Anne, Anthony, Archer, Arizona, Arthur, Astor, Baker, Baldwin, Barth, Beacon, Belmont, Belt, Bernard, Bertha, Betsy, Blaine, Blake, Bolster, Boyd, Brickell, Browne, Bryan, Burke, Burton, Butler, and Byrne.

SEC. 9. Section 9, chapter 5, Laws of 1957 is amended to read as follows:

Seventh—the following precincts in the city and county of Spokane: 319, 320, 321, 322, 323, 715, 716, 725, 726, 727, 728, 729, Cannon, Carleton, Carlisle, Carrie, Cass, Charlotte, Clara, Clay, Cleveland, Clough, Conklin, Cora, Cowley, Custer, Daggett, Daisy, Damon, Daniel, Dawson, Day, Dayton, Delaware, Della, Derby, Detroit, Dewey, Dexter, Dillon, Dixie, Dora, Doland, Douglas, Dunn, Dyer, and Edwards.

SEC. 10. Section 10, chapter 5, Laws of 1957 is amended to read as follows:

Eighth—the counties of Lincoln, Adams and Ferry.

SEC. 11. Section 11, chapter 5, Laws of 1957 is amended to read as follows:

Ninth—the county of Whitman.

SEC. 12. Section 12, chapter 5, Laws of 1957 is amended to read as follows:

Tenth—the counties of Columbia, Asotin, and Garfield.

SEC. 13. Section 13, chapter 5, Laws of 1957 is amended to read as follows:

Eleventh—the county of Walla Walla.

SEC. 14. Section 14, chapter 5, Laws of 1957 is re-enacted to read as follows:

Twelfth—Chelan county.

SEC. 15. Section 15, chapter 5, Laws of 1957 is amended to read as follows:

Thirteenth—Kittitas county and Grant county.

SEC. 16. Section 16, chapter 5, Laws of 1957 is amended to read as follows:

Fourteenth—the following precincts in Yakima county: Airport 137, Cascade 121, Cottonwood 122, East Fruitvale 127, East Naches 141, East Selah 143, East Summitview 144, East Tieton 89, Englewood 135, Eschbach 147, Fairgrounds, Fairview 148, Gleed 51, Gromore 128, Harwood 56, Jefferson, Leamingburg 58, Lower Wenas 60, Naches Heights 67, Naches City 66, Nile 68, North Cowiche 130, Riverside 74, Selah Central 77, Selah Extension 78, Selah Heights 79, Selah Rural 132, Selah Town 76, Selah Town 134, Selah Town 151, South Nob Hill 142, South Cowiche 123, Sumach 133, Sunset, Tampico 88, West Fruitvale 149, West Naches 105, West Nob Hill 106, West Summitview 108, West Tieton

114, Westview, Wide Hollow 111, Wiley City 112, and Upper Wenas 98, and the city of Yakima precincts 1 through 61 inclusive.

SEC. 17. Section 17, chapter 5, Laws of 1957 is amended to read as follows:

Fifteenth—that part of Yakima county not included in the fourteenth district.

SEC. 18. Section 18, chapter 5, Laws of 1957 is amended to read as follows:

Sixteenth—Benton county and Franklin county.

SEC. 19. Section 19, chapter 5, Laws of 1957 is amended to read as follows:

Seventeenth — Skamania county, Klickitat county and the following precincts in Clark county: Alpine, Battleground North, Battle Ground South, Cedar Creek, Charter Oak, Chelatchie, Columbia West, English, Fern Prairie East, Fern Prairie West, Gibbons, Haagen, Hall, Hayes, Heisson, La-Center, Lackamas North, Lackamas South, Lewisville, Lockwood Creek, Manor, Meadow Glade, Mountain View, Norway, Paradise Point, Pioneer, Proebstel, Russell, Skye, Twin Falls, Woodburn, Yacolt, and Camas precincts 101 through 113 inclusive, and Washougal precincts A, B, C, D, E, and F.

SEC. 20. Section 20, chapter 5, Laws of 1957 is re-enacted to read as follows:

Eighteenth—the counties of Cowlitz and Wahkiakum.

SEC. 21. Section 21, chapter 5, Laws of 1957 is amended to read as follows:

Nineteenth—Pacific county and the following precincts in Grays Harbor county: Artic, Blockhouse, Connie, Cosmopolis 1, Cosmopolis 2, Cosmopolis Rural, Delezenne, Fords Prairie, Grayland, Johns River, Malone, Melbourne, Oakville 1, Oakville 2, Ocosta, Porter, Vesta, Westport, and Westport Rural.

SEC. 22. Section 22, chapter 5, Laws of 1957 is re-enacted to read as follows:

Twentieth—Lewis county.

Twenty-first—Grays Harbor county, except that portion named as part of the nineteenth district.

SEC. 24. Section 24, chapter 5, Laws of 1957 is re-enacted to read as follows:

Twenty-second—Thurston County.

SEC. 25. Section 25, chapter 5, Laws of 1957 is amended to read as follows:

Twenty-third—Kitsap county.

SEC. 26. Section 26, chapter 5, Laws of 1957 is amended to read as follows:

Twenty-fourth—the counties of Clallam, Mason and Jefferson.

SEC. 27. Section 27, chapter 5, Laws of 1957 is amended to read as follows:

Twenty-fifth—the following precincts in Pierce county: Alder, Alderton, Allison, Ashford, Bingham, Bonney Lake, Breckon, Buckley 1, Buckley 2, Carbonado, Central, Clear Creek, Dawson, Dieringer, Eatonville 1, Eatonville 2, Edgewood, Elbe, Elk Horn, Fife, Firgrove, Firwood, Fruitland, Garden-

ville, Graham, Grant, Harvard, Hudson, Johnson, Kapowsin, Kelly Lake, Lake Tapps, Larchmont, McMillin, Meeker, Meridian, Midland, Milton, Mulvey, National, North Puyallup, Orting 1, Orting 2, Orton, Puyallup Ward 1, precincts 1 through 6 inclusive, Puyallup Ward 2, precincts 1 through 6, inclusive and Puyallup Ward 3, precincts 1 through 6 inclusive, Riverside, Soldiers Home, South Prairie, Spinning, Sumner 1, Sumner 2, Sumner 3, Sumner 4, Sumner 5, Sumner 6, Taylor, Thrift, Tidehaven, Valley, Victor Falls, Webstone, Wilkeson, Woodland Heights, and Woodrow.

SEC. 28. Section 28, chapter 5, Laws of 1957 is amended to read as follows:

Twenty-sixth—the following precincts in Pierce county: Anderson Island, Artondale, Fox Island, Gig Harbor 1, Gig Harbor 2, Hales Pass, Home, Lakebay, Longbranch, Minter, Purdy, Ruston, Rosedale, Vaughn and Wollochet; and the following precincts in the city of Tacoma: 26-1 through 26-61 inclusive and 29-91 through 29-95 inclusive.

SEC. 29. Section 29, chapter 5, Laws of 1957 is amended to read as follows:

Twenty-seventh—the following precincts in the city of Tacoma: 25-1, 25-2, 27-1 through 27-32 inclusive, with the exception of 27-14, 27-18, 27-19 and 27-21 which have been abolished; 28-1 through 28-5 inclusive, with the exception of 28-3 which has been abolished; 29-1 through 29-23 inclusive with the exception of 29-3, 29-10, 29-15 which have been

abolished; 29-69 through 29-90 inclusive, and 29-96; and the following precincts in Pierce county: Dash Point and Hyada Park.

SEC. 30. Section 30, chapter 5, Laws of 1957 is amended to read as follows:

Twenty-eighth—the following precincts in Pierce county: Armour, Benbow, Brookdale, Cleveland, Clover Creek, College, Collins, Cooper, Elk Plain, Faucett, Garfield, Hill Garden, Holz, Lacamas, McKenna, Meadow, Muck, Parkland 1, Parkland 2, Polk, Roy, Sales, Silver Lake, Spanaway 1, Spanaway 2, Spanaway 3, Spanaway 4, Tanwax, and Wildwood: and the following precincts in the city of Tacoma: 25-3 through 25-13 inclusive with the exception of 25-8 which has been abolished; 28-6 through 28-44 with the exception of 28-12 and 28-43 which have been abolished; 29-41 through 29-50, with the exception of 29-46 which has been abolished; and 29-98.

SEC. 31. Section 31, chapter 5, Laws of 1957 is amended to read as follows:

Twenty-ninth—the following precincts in Pierce county: American Lake, American Lake Gardens, Arena, Clover Park, Crystal, Custer, Day Island, Dekoven, Dupont, Fairway, Fane, Fircrest No. 1, Fircrest No. 2, Fircrest No. 3, Firloch, Flett, Gravelly Lake, Hunt's Prairie, Idylwild, Interlaaken, Jackson, Lake City, Lake Louise, Lakeview, Lakewood, Menlo, Narrowsview, Nyanza, Olympic, Park Lodge, Piermont, Ponders, Steilacoom, Tillacum,

University Place, and Village: and the following precincts in the city of Tacoma: 29-24 through 29-40 inclusive; 29-46, 29-51 through 29-68 inclusive; and 29-97.

SEC. 32. Section 32, chapter 5, Laws of 1957 is amended to read as follows:

Thirtieth—the following precincts in King county: Aaron, Algona 1, Algona 2, Angle Lake, Athlone, Auburn precincts 1 through 12 inclusive, Bayview, Benson, Big Soos, Birch, Bishop, Black Diamond, Boise, Bow Vista, Brooklyn, Buenna, Burton, Cascade, Christopher, Cork, Cove, Covington, Cumberland, Des Moines, Dilworth, Dockton, Dolphin, Durham, East Hill, Ellinson, Emerald, Enumclaw 1, Enumclaw 2, Enumclaw 3, Enumclaw 4, Enumclaw 5, Fenwick, Green River, Harding, Huntington, Isabella, Island, Jovita, Kent precincts 1 through 8 inclusive, Krain, Lake, Lakehaven, Lakeland, Lakota, Lea Hill, Lester, Lincoln, Lisabuela, Little Soos, McMicken, Madison, Marlene, Maury, Meeker, Meridian, Midway, Mirror Lake, Muckleshoot, Ninety-nine, Norpac, North Hill, Orchard, Orillia, Osceola, Pacific 1, Pacific 2, Palmer, Panther Lake, Quartermaster, Ravensdale, Redondo, Russell, Salt Water, Sawyer, Seacliff, Soos Creek, Springbrook, Star Lake, Steelhead, Steel Lake, Stuck, Thomas, Tralee, Valley, Vashon, Wabash, Wayne, Webster, White River, Woodmont, Wynoche and Zenith.

SEC. 33. Section 33, chapter 5, Laws of 1957 is amended to read as follows:

Thirty-first—the following precincts in King county: Airport, Alder, Ambaum, Anthony, Avon, Bangor, Beverly, Boeing, Bossert, Boulevard Park, Bow Lake, Burien, Carleton, Cedarhurst, Center, Crescent, Douglas, Dublin, Dunlap, Dunmore, Duwamish, Eudocia, Evansvale, Evergreen, Five Corners, Florina, Ford, Francis, Garrett, Glasgow, Greendale, Gregory Heights, Hayes, Hazel Valley, Heights, Hestia, Highline, Jefferson, Juniper, Katherine, Kilpatrick, Lakeridge, Lakewood, Liberty, Lilac, Lynmar, McKinley, Madrona, Manhattan, Margaret, Marian, Marie, Military Road, Monterey, Mount View, Myers Way, Nokomis, Normandy Park 1, Normandy Park 2, Normandy Park 3, North Burien, North Riverton, Pilgrim, Plato, Qualheim, Regal, Rendini, Roseburg, Rowell, St. Helens, Salmon Creek, San Juan, Seahurst, Seaview, Seneca, Seola, Skyway, South Park, Southern Heights, Stimson Park, Sunnycrest, Sunnydale, Sylvan, Taft, Three Tree Point, Tipperary, Ursina, Valona, Victory, Vista, White Center, Wildwood, Wilson, Woodside and Wynona: and the following precincts in the city of Seattle: 31-1 through 31-103, inclusive, with the exception of 31-34, 31-35 and 31-36, which have been abolished.

SEC. 34. Section 34, chapter 5, Laws of 1957 is amended to read as follows:

Thirty-second—the following precincts in the city of Seattle: 32-1 through 32-76 inclusive, 44-31, 44-32, 44-33, 44-46, and 46-1 through 46-5 inclusive.

SEC. 35. Section 35, chapter 5, Laws of 1957 is amended to read as follows:

Thirty-third—the following precincts in the city of Seattle: 33-1 to 33-89 inclusive, with the exception of 33-33, which has been abolished.

SEC. 36. Section 36, chapter 5, Laws of 1957 is amended to read as follows:

Thirty-fourth—the following precincts in the city of Seattle: 34-1 through 34-104 inclusive, with the exception of 34-71 through 34-74 which have been abolished.

SEC. 37. Section 37, chapter 5, Laws of 1957 is amended to read as follows:

Thirty-fifth—the following precincts in the city of Seattle: 35-1 through 35-76 inclusive, 36-51 through 36-55 inclusive, and 36-59 through 36-70 inclusive.

SEC. 38. Section 38, chapter 5, Laws of 1957 is amended to read as follows:

Thirty-sixth—the following precincts in the city of Seattle: 36-1 through 36-50 inclusive, 36-56 through 36-58 inclusive, 36-71, 36-72, 44-1 through 44-30 inclusive, 44-92 through 44-94 inclusive, and 44-127 through 44-133 inclusive.

SEC. 39. Section 39, chapter 5, Laws of 1957 is amended to read as follows:

Thirty-seventh—the following precincts in the city of Seattle: 37-1 through 37-86 inclusive.

SEC. 40. Section 40, chapter 5, Laws of 1957 is amended to read as follows:

Thirty-eighth—the following precincts in the county of Snohomish: Ash, Ballinger, Bear Creek, Bellevue, Berkshire, Beverly, Beverly Hills, Beverly Park, Brier, Broadway, Cabot, Canyon, Cathcart, Center, Chase, Clearview, Crest, Crystal Springs, Darlington, Edmonds 1 through 3 inclusive, Everett 1 through 68 inclusive, Evergreen, Fernwood, Field, Firdale, Hilltop, Hilton Lake, Hiway, Hunt, Intercity, Keeton, Kennard, Lane, Laurel Heights, Lincoln, Locust, Lowell, Lynncrest, Madison, Magnolia, Maltby, Manor, Manordale, Maplewood, Marsh, Martha Lake, Mountlake Terrace 1 through 9 inclusive, Mukilteo, Nelson, North Alderwood, North Lynnwood, Olivia, Pacific, Pearson, Pinehurst, Perrin, Puget, Radar, Ridge, Serene, Silver Lake, Solners, South Alderwood, South Lynnwood, South Snohomish, Stickney, Talbot, Thomas Lake, Tualco, Vista, Westwood, Whaleback, Willowdale, Wilson, Woodway, Yost and all of Island county except Camano Island.

SEC. 41. Section 41, chapter 5, Laws of 1957 is amended to read as follows:

Thirty-ninth—that part of Snohomish county not included in the thirty-eighth district, and Camano Island of Island county.

SEC. 42. Section 42, chapter 5, Laws of 1957 is amended to read as follows:

Fortieth—the counties of San Juan and Skagit.

SEC. 43. Section 43, chapter 5, Laws of 1957 is amended to read as follows:

Forty-first—all of the precincts in the county of Whatcom, outside the city of Bellingham as the corporate boundaries of that city existed on July 1, 1956.

SEC. 44. Section 44, chapter 5, Laws of 1957 is amended to read as follows:

Forty-second—the city of Bellingham as the corporate boundaries of that city existed on July 1, 1956.

SEC. 45. Section 45, chapter 5, Laws of 1957 is amended to read as follows:

Forty-third—the following precincts in the city of Seattle: 43-1 through 43-93 inclusive.

SEC. 46. Section 46, chapter 5, Laws of 1957 is amended to read as follows:

Forty-fourth—the following precincts in King county: Anita, Arethusa, Innis Arden, Park View, Point Wells, Richmond, Rowena, Sea Breeze, Transvaal, Westminster, and Westover and the following precincts in the city of Seattle: 43-34 through 44-44 inclusive, with the exception of 44-37 and 44-38, which have been abolished, 44-45, 44-47, and 44-48 through 44-91 inclusive, 44-95 through 44-126 inclusive, and 44-134.

SEC. 47. Section 47, chapter 5, Laws of 1957 is amended to read as follows:

Forty-fifth—the following precincts in King county: Bircenna, Blarney, Brace, Clive, Echo Lake, Elise, Florence, Gloria, Greenwood, Joanne, Kilkenny, Louise, Marilyn, Parkwood, Ronald, Shoreline, Underwood, and Woodpark, and Seattle precincts 45-1 to 45-106 inclusive.

SEC. 48. Section 48, chapter 5, Laws of 1957 is amended to read as follows:

Forty-sixth—the following precincts in the city of Seattle: 46-6 through 46-129 inclusive and 46-143 through 46-149 inclusive.

SEC. 49. Section 49, chapter 5, Laws of 1957 is amended to read as follows:

Forty-seventh—the following precincts in King county: Allentown, Arthur, Baring, Berlin, Bryn Mawr, Campbell Hill, Carnation, Cedar Falls, Cedar Mountain, Cedar River, Charlotte, Cherry Valley, Coalfield, Delano, Duncan, Duvall, Earlington, Eastgate, Elliott, Factoria, Fall City, Foster, Fuller, Galway, Gilman, Hazelwood, Hillcrest, Hillman, Hilltop, Hobart, Honey Dew, Issaquah 1, Issaquah 2, Kennydale, Macadam, Martin Creek, May Creek, May Valley, Meadowbrook, Newcastle, Newport, North Bend 1, North Bend 2, Novelty, Patterson, Preston, Rainier, Ramona, Renthree, Renton 1 through 26 inclusive, Riverton, Shamrock, Showalter, Shuffleton, Skykomish, Snoqualmie 1, Snoqualmie 2, Spring Glen, Sterling, Stillwater, Sunset, Tanner, Thorndyke, Tiger Mountain, Tolt, Tukwila 1, Tukwila 2, Val-vue, Vincent, Wallace, Warren and Willow Ridge.

SEC. 50. Section 50, chapter 5, Laws of 1957 is amended to read as follows:

Forty-eighth—the following precincts in King county: Abbey, Arrowhead, Avisa, Avondale, Ballinger, Bear Creek, Beaux Arts, Beaver Lake, Bellevue 1 through 17 inclusive, Berrest, Bonnie Glen, Bothell 1, Bothell 2, Bothell 3, Briarcrest, Bridle Trails, Brookside, Chauncey, Cleveland, Clyde Hill 1, Clyde Hill 2, Corwin, Cottage Lake, Country Club, Denny Park, Donahoe, Donegal, Down, Dunne, East Seattle, Electra, Enatai, Erford, Finn Hill, Firland, Firlock, Fruitland, Georgette, Glocca Mora, Grover, Hamlin, Happy Valley, Hemlock, Highland, Hillside, Hollywood, Houghton 1, Houghton 2, Hunts Point, Inglewood, Interlake, Jackson, Jean, Juanita, Kenmore, Kerry, Kildare, Killarney, Kirkland 1 through 12 inclusive, Lago Vista, Lake Forest, Lake Hills, Lake View, Leota, Linwood, Londonderry, McGilvra, Medina 1 through 4 inclusive, Mercer, Meydenbauer, Monohon, Monte Vista, Moorlands, North City, North Creek, Northridge, O'Farrell, Paramount, Park Lane, Perkins, Phantom Lake, Polk, Redkirk, Redmond 1, Redmond 2, Ridgecrest, Roanoke, Rose Hill, Rush, Rustic, Sammamish, Sheridan, Sherwood, Shorewood, Snoking, Taylor, Thellbo, Ward, Wilburton, Woodinville, Yarrow, Yokena, Zachary, and Zirconia, and the following precincts in the city of Seattle: 46-130 through 46-142 inclusive.

SEC. 51. Section 51, chapter 5, Laws of 1957 is amended to read as follows:

Forty-ninth—the following precincts in Clark county: Baker, Barbeton, Beall, Betts, Biddle, Bliss, Burnt Brush Creek, Brush Prairie, Burton, Clyde, Connor, Covington, Curtin, Cushing, Daybreak, Elking, Ellsworth, Enterprise, Firdale, Fishers, Fourth Plain, Fruit Valley, Gee Creek, Glenwood Heights, Greeley, Harney, Hazel Dell East, Hazel Dell North, Hazel Dell West, Hidden North, Hidden South, J. D. Ross, Jaggy, Klein, Lake Shore, Lamb, Laraclef, Marion, Marshall, Miller, Minnehaha North, Minnehaha South, Nelson, Pleasant Valley, Preston, Ridgefield North, Ridgefield South, Salmon Creek, Sifton, Smith, Stockford, Tracy, Walnut Grove, Whipple Creek, Willows and the city of Vancouver precincts: 161 through 230 inclusive.

SEC. 52. Section 52, chapter 5, Laws of 1957 is re-enacted to read as follows:

The house of representatives shall consist of ninety-nine members to be elected from forty-nine representative districts. Each senatorial district, as numbered and created by this act shall constitute a representative district bearing the same number.

SEC. 53. Section 53, chapter 5, Laws of 1957 is amended to read as follows:

The fourteenth, twenty-third, twenty-fourth, thirty-first, thirty-eighth and forty-ninth representative districts shall have three representatives. The eighth, tenth, seventeenth, nineteenth and forty-first shall have one represetnative. All other representative districts shall have two representatives.

SEC. 54. Section 54, chapter 5, Laws of 1957 is re-enacted to read as follows:

The terms of office of all senators and representatives elected under the provisions of this act shall commence on the second Monday in January following the date of their elections.

SEC. 55. Section 55, chapter 5, Laws of 1957 is re-enacted to read as follows:

The representatives provided for in this act shall be elected at the general election to be held on the first Tuesday after the first Monday in November, 1958, and every two years thereafter.

SEC. 56. Section 56, chapter 5, Laws of 1957 is hereby repealed.

SEC. 57. Section 57, chapter 5, Laws of 1957 is amended to read as follows:

Any precinct not specifically mentioned or included within the boundaries of any senatorial and representative district, and which is completely surrounded by territory embraced within a particular senatorial and representative district, shall be and become a part of such senatorial and representative district. In case any such precinct is not completely surrounded by territory embraced within a particular senatorial and representative district, the precinct shall be and become a part of the senatorial and representative district having the smallest number of electors and having territory adjoining or contiguous to such precinct in the same county in which the precinct is located.

SEC. 58.- Section 58, chapter 5, Laws of 1957 is re-enacted to read as follows:

Chapter 2, Laws of 1931; chapter 20, Laws of 1933; chapter 74, Laws of 1933; chapter 221, Laws of 1951; and RCW 44.04.020, 44.04.110, 44.08.010, 44.08.020, 44.08.060, 44.08.061, 44.12.010, and 44-.12.020 are each repealed: *Provided*, That this act shall not in any way affect the membership, districts or other organization of the thirty-fifth legislature nor abolish nor shorten any terms of office of any member of the legislature commenced prior to the effectiveness of this act.

Passed the Senate February 26, 1957.

Passed the House March 12, 1957.

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 381

VICTOR A. MEYERS, Secretary of the State of the State of Washington, *Appellant*,

vs.

JAMES THIGPEN and THE LEAGUE OF WOMEN VOTERS OF WASHINGTON, INC., *Appellees*.

UPON APPEAL FROM THE SPECIAL THREE-JUDGE COURT CONVENED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

MOTION TO AFFIRM

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OCTOBER TERM, 1963

No. 381

VICTOR A. MEYERS, Secretary of the State of the State of Washington, *Appellant*,

vs.

JAMES THIGPEN and THE LEAGUE OF WOMEN VOTERS OF WASHINGTON, INC., *Appellees*.

UPON APPEAL FROM THE SPECIAL THREE-JUDGE COURT CONVENED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

MOTION TO AFFIRM

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INDEX

	Page
Motion to Affirm	1
Additional Statement of the Case	1
Argument	5
A. Appellant's First Question Presented	5
B. Appellant's Second Question Presented	10
C. Appellant's Third Question Presented	12
D. Appellant's Fourth Question Presented	16
E. Appellant's Fifth Question Presented	17
F. Appellant's Sixth Question Presented	18
Conclusion	19
Appendix A—Pre-Trial Order	23

TABLE OF CASES

Baker v. Carr, 369 U.S. 186, 7 L.ed.(2d) 663 (1962) 8, 9, 10, 11, 18

Gray v. Sanders, 9 L.ed.(2d) 821, 83 Sup.Ct. 801 (1963) 18

Maryland Commission for Fair Representation v. Tawes, 228 Md. 412, 180 A.(2d) 656 (1962) 16

Moss v. Burkhardt, 207 F.Supp. 885 (D.C. Okla. 1962) 11

Scholle v. Hare, 369 U.S. 429, 8 L.ed.(2d) 1, 82 Sup. Ct. 910, Reh. Den. 370 U.S. 906, 8 L.ed.(2d) 402, 82 Sup.Ct. 1247 (1962) 9, 11

STATUTES

Chapter 5, Laws 1957, State of Washington 2

Chapter 289, Laws 1957, State of Washington 2

28 U.S.C. § 2284 1

CONSTITUTIONS

Article 2, Section 3, Washington State Constitution 13

Amendment 14, United States Constitution 3, 8, 12, 18

Amendment 30, Washington State Constitution 11, 13, 15, 16

COURT RULES

Rule 16, Revised Rules of the United States Supreme Court 1

In the

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VICTOR A. MEYERS, Secretary of the State of the State of Washington, *Appellant*,

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No. 381

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MOTION TO AFFIRM

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Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final decree of the District Court be affirmed on the ground that the questions raised by appellants are so insubstantial as not to warrant further argument.

ADDITIONAL STATEMENT OF THE CASE

This is a direct appeal from a decree entered on May 27, 1963, by a district court of three judges specially constituted pursuant to 28 U.S.C. Section 2284. The decree declares that the Washington State statutes establishing senatorial and representative districts for the election of senators and representatives

to the legislature of the State of Washington are in violation of the Constitution of the United States of America and are null, void and of no further force and effect. The decree permanently enjoins the defendant Secretary of State, who is the chief election officer of the State of Washington, from himself doing, or from aiding, counseling or advising any other person to do, either directly or indirectly, any of the following specifically listed acts in connection with the election of candidates for the offices of state senator and representative from any district as defined by the Laws of 1957, Chapter 289, Sections 1 through 53, inclusive; and the Laws of 1957, Chapter 5, Sections 1 through 53, inclusive:

1. Accepting any declaration of candidacy;

2. Accepting any filing fee;

3. Accepting any certificate of election from any county auditor;

4. Accepting any official canvass from any county canvassing board;

5. Certifying the election of any individual candidate;

6. Preparing or approving any ballot;

7. Holding any election, either primary or general.

The decree appealed from states further that nothing in the decree shall be construed in any way to:

1. Change the total number and terms of office of senators and representatives provided for by Washington State statutes;

2. Affect voting precincts presently established or which may be created in accordance with law;

3. Affect the present rules and procedures governing the registration of voters and the holding of elections, either primary or general;

4. Prevent the election of members of the legislature from the state at large.

The decree dismissed plaintiff's prayer for relief predicated upon Congressional malapportionment. This portion of the decree is not appealed from.

Finally, the decree provides that the court retains jurisdiction of the cause, and further hearing was set for 2:00 P.M., May 4, 1964, or such other time as the court may direct.

The entire text of the decree of May 27, 1963 is set forth as Appendix A to appellant's Jurisdictional Statement.

Appellee James Thigpen brought this action on June 6, 1962 in the United States District Court for the Western District of Washington, Northern Division. Appellee is a citizen of the United States of America, of the State of Washington and resides in the Midway Precinct of King County which is in the 30th State Legislative District and in the 7th Congressional District. The action was brought on behalf of Appellee Thigpen and all persons similarly situated. Appellee challenged the Washington State statutes establishing the Washington State Legislative apportionment and the seven Congressional Districts in Washington State as being in contravention of the equal protection clause of the 14th Amendment to the United States Constitu-

tion. Appellee League of Women Voters of Washington, Inc. sought and was permitted to intervene in the action.

On July 13, 1963, following a hearing before the three judge Court, appellee's prayer for an Interlocutory Injunction enjoining the Washington State primary election of 1963 was denied. At that time, the court set down the pre-trial hearing for November 12, 1962 and set the trial on the merits for November 27, 1962.

Following several pre-trial conferences between all parties, an extensive Pre-Trial Order was entered by the Honorable William T. Beeks on November 16, 1962. The Order is contained in the record on appeal as Clerk's Filing No. 58. (That Pre-Trial Order together with its Exhibits 7A and 7B is set forth in full as Appendix A hereto.)

On November 30, 1962, trial was held before the three judge Court. The pertinent facts having been agreed upon and contained in the Pre-Trial Order, the trial consisted solely of legal argument based upon the facts. On December 13, 1962, the court below filed its opinion which is set forth in full as Appendix B to appellant's Jurisdictional Statement. In that opinion the court found that the existing apportionment of the Washington Legislature was invidiously discriminatory. The court took notice of the convening of a new legislature on January 14, 1963, and it continued the cause to permit the legislature to take action.

The Washington State Legislature met in regular session and in special session in the early months of 1963. It failed to enact any redistricting legislation.

This cause again came on for hearing on April 29, 1963 at which time the court heard extensive argument from counsel for all parties as to proper and suitable remedies to implement its opinion of December 13, 1962. An oral opinion was rendered on May 3, 1963 and the decree appealed from was entered on May 27, 1963.

ARGUMENT

The Decree of May 27, 1963 of the District Court is plainly correct.

The facts in this case are not in dispute. This matter was heard upon an agreed Pre-Trial Order (Appendix A herein).

Appellant asserts that this appeal presents six questions which merit plenary consideration by this Court. We submit that no one of those asserted questions merits oral argument before this Court.

A. Appellant's First Question Presented

> "Does numerical disparity in population of some districts from which members of a state legislature are elected, without any other showing of discrimination, violate the equal protection clause of the 14th Amendment of the Federal Constitution so as to invalidate all state apportionment laws?"

Appellant's wording of this question implies that the decision of the court below was based upon slight numerical disparities among a few legislative districts. In fact, the decision is founded upon gross numerical disparities among many legislative districts across the length and breadth of the State of Washington.

The 1960 population figures of each of Washington's

49 Legislative Districts together with the apportionment of senators and representatives therein are contained in the Pre-Trial Order. That Order, together with its Exhibits 7A and 7B, reveal many gross numerical disparities among the senatorial and legislative districts. To mention but a few we would point out the following:

1. A comparison of appellee Thigpen's vote in the 30th Legislative District (King County) for the State House of Representatives with that of an individual in the 2nd Legislative District (Pend Oreille and Stevens Counties) shows that his vote has but 25.7% of the value of a vote in the 2nd Legislative District. Conversely, the voter in the 2nd District has a vote value 3.88 times that of appellee Thigpen.

2. Comparison of appellee Thigpen's vote for the State Senate with that of a voter in the 19th Legislative District (Grays Harbor and a portion of Pacific County) shows that his vote has but 20.9% of the value of a vote in the 19th District. Conversely, the voter in the 19th District has a vote value 4.68 times that of appellee Thigpen.

3. The population according to the 1960 census of the 31st Legislative District, which neighbors appellee's district in Southwest King County, is 145,180 persons. It is entitled to one State Senator. Comparing an individual vote for State Senator in the 31st District to an individual vote in the 19th District reveals that the 31st District vote has a value of 13.8% of a vote in the 19th District. Conversely, the 19th District vote has 7.25 times the value of a 31st District vote.

4. Within King County, the 35th Legislative

District has a 1960 population of 30,470 persons and is entitled to one State Senator. The 31st Legislative District with a population of 145,180 is also entitled to one State Senator. Thus the individual vote in the 31st District has a value of but 20.7% of that in the 35th District (downtown Seattle). Conversely, the 35th District vote has a value 4.7 times that of the 31st.

5. If each district had exactly the same population as every other legislative district, the number of persons per State Representative would be 28,527 and the number of persons per State Senator would be 57,636. The 34th Legislative District in King County is the only district approximating the norm. As shown in Exhibits 7A and 7B of the Pre-Trial Order (Appendix A), the other districts range from 57% below the norm to 102% above the norm as to population per State Representative and from 65% below the norm to 152% above the norm as to population per State Senator.

These disparities do not follow any rational pattern or any pattern whatsoever. The disparities occur between different districts in the same counties (30th and 31st compared to 35th in King County; 3rd and 5th in Spokane County; 38th compared to 39th in Island and Snohomish Counties) and between districts in neighboring counties (31st in King compared to 27th in Pierce; 5th in Spokane compared to 2nd in Pend Oreille and Stevens; 20th in Lewis compared to 19th in Pacific and Grays Harbor; 16th in Benton and Franklin compared to 10th in Asotin, Columbia and Garfield Counties).

6. The inequalities also run from north to south (16th in Benton and Franklin compared to 2nd in

Pend Oreille and Stevens) and from east to west (5th in Spokane compared to 19th in Pacific and Grays Harbor Counties).

7. Twenty-five legislative districts containing 35.6% of the total state population have a majority in the State Senate, while 24 districts containing 38% of the total population have a majority in the State House of Representatives.

In its Opinion of December 13, 1962 (Appendix B of appellant's Jurisdictional Statement) the trial court stated:

> "The lines of inequality run the length and breadth of the State, from east to west and from north to south, between contiguous districts and between different districts in the same cities. The inevitable effect thereof has been to increase rather than decrease disparities in voting strength with the growth of population. The conclusion is inescapable that the existing apportionment of the Washington Legislature is invidiously discriminatory."

Exact numerical equality of population among legislative districts is not required by the equal protection clause of the 14th Amendment to the United States Constitution. However, it is clear under *Baker v. Carr*, 369 U.S. 186, 7 L.ed.(2d) 663 (1962) that a voter is deprived of his right to have equal protection of the laws if the number of voters in his legislative district is unreasonably and irrationally larger than the number of voters in other legislative districts.

In his separate concurring opinion in *Baker v. Carr*, *supra*, Mr. Justice Clark set forth some examples of disparity in Tennessee and stated:

> "No one . . . contends that mathematical equality among voters is required by the Equal Protection Clause. But certainly there must be some rational design to a state's districting. The discrimination here does not fit any pattern—as I have said, it is but a crazy quilt."

Bearing in mind that the District Court in the instant case found the Washington legislative districts to be invidiously discriminatory, the question presented in *Scholle v. Hare*, 369 U.S. 429, 8 L.ed.(2d) 1, (1962), is in effect appellant's first question in the instant case. It was:

> "1. Does the 14th Amendment to the U.S. Constitution prohibit the establishment by a state of permanent State Legislative Districts grossly unequal in population?"

The response of this Court in *Scholle v. Hare, supra*, was to remand the case "for further consideration in the light of *Baker v. Carr* . . . ". In effect this Court stated that the issue was settled by *Baker v. Carr* and was not to be considered anew.

It is to be seen from the foregoing that the first of appellant's six asserted questions is without merit. Where the ratio in population of senatorial districts is as high as 7.25 to 1 and of legislative districts as high as 4.7 to 1 in the State of Washington, appellant cannot be heard to say that the voters in the more populous districts have not been deprived of the equal protection of the laws.

B. Appellant's Second Question Presented

"Where initiative and referendum enable voters to enact legislation and accomplish legislative reapportionment independent of the legislature, is action of the federal courts invalidating all apportionment laws warranted upon a simple showing of numerical disparity in some legislative districts?"

By asserting that the foregoing is a question presented by this appeal, appellant implies that the availability in Washington of the initiative and the referendum deprives a Washington voter of his right to challenge the constitutionality of our apportionment statute.

It is true that in *Baker v. Carr, supra,* Mr. Justice Clark noted that Tennessee did not have the initiative. It is clear, however, that Mr. Justice Clark was only underlining the complete impotence of the Tennessee voters to do anything to remedy the malapportionment of their state.

That the initiative can in principle have no effect upon a citizen's right to demand equal protection of the laws with respect to legislative apportionment is demonstrated by the following:

1. If the initiative bars a citizen from challenging the unconstitutionality of a legislative apportionment statute, it must in like measure bar him from challenging the constitutionality of a statute which invidiously discriminates against him because of his race, religion or national origin. It has never been suggested that the initiative has this latter effect.

2. In order to get an initiative measure upon the ballot in the State of Washington, the proponents must secure the signatures of registered voters in number equal to "eight per centum of the number of voters registered and voting for the office of governor at the preceding regular gubernatorial election." Amendment 30 to Washington State Constitution (amending Article 2, Section 1A). In 1962, the number of signatures required exceeded 97,000. Due to this stringent requirement for placing an initiative measure upon the ballot, the power of initiative is, as a practical matter, no remedy at all for an individual citizen who has been deprived of the equal protection of the laws. It is manifestly not the equivalent of the remedy of court action.

3. Implicit in appellant's second question is the contention that an admittedly invidious discriminatory statute can be made constitutional by a failure of the people to change the statute by the initiative process. If such were the law, it would mean that the initiative, rather than being a defense against legislative oppression, would in actuality strip a citizen of the protection which the constitution and the courts afford him.

In *Scholle v. Hare, supra,* that portion of the Michigan Constitution against which the action was directed was in fact adopted by the people of Michigan in a referendum amending the State Constitution. Despite the fact that such adoption was by the people rather than by the legislature, this Court did not hesitate to remand the case for consideration in light of *Baker v. Carr, supra.*

In *Moss v. Burkhardt,* 207 F.Supp. 885 (D.C. Okla. 1962) a three judge District Court held that the exist-

ing apportionment was invalid as being invidiously discriminatory. The people of Oklahoma had the initiative power. Referring to the effect of the availability of the initiative in Oklahoma, the court there stated:

> "We, of course, have in mind the pending Initiative Petition as a possible available remedy, but the right asserted here cannot be made to depend upon the will of the majority. It is founded in the Federal Statute, which gives redress for the deprivation of the civil rights, including the integrity of the ballot." 207 F.Supp. 885, 894.

With reference to the effect of the initiative the court below in the instant case stated in its opinion of December 13, 1962:

> "The inalienable constitutional right of equal protection cannot be made to depend upon the will of the majority."

The availability of the initiative can manifestly have absolutely no weight, one way or another, in the determination of whether a particular statute does or does not deprive a citizen of the equal protection of the laws guaranteed to him by the 14th Amendment to the United States Constitution. The second of appellant's questions is therefore without merit.

C. Appellant's Third Question Presented

> "Where the time interval since enactment of a legislative apportionment statute, unimpeached as to validity at time of enactment is only five years, is federal court action warranted upon a simple showing of present numerical disparity as to population of some districts?"

This question implies that only long-standing grievances are subject to constitutional scrutiny and that a citizen can be deprived of equal protection of the law only if that deprivation has been of long duration.

A brief review of facts set forth in the Pre-Trial Order (Appendix A hereto) is necessary to place this question in perspective:

1. The Washington State Constitution includes the following provision requiring the periodic reapportionment of the legislature:

> "Art. 2 § 3 THE CENSUS. The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and ninety-five and every ten years thereafter; and at the first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, *according to the number of inhabitants*, excluding Indians not taxed, soldiers, sailors and officers of the United States army and navy in active service." (Emphasis ours)

2. Following the adoption of the State Constitution in 1889, the legislature reapportioned the state in the years 1890 and 1901.

3. Thereafter, the people reapportioned the state by means of the initiative process in the year 1930.

4. The state was not then reapportioned until the people again did so by means of Initiative No. 199 which was adopted at the general election in November of 1956. This initiative had been proposed by appellee League of Women Voters of Washington, Inc.

5. Thereafter, the legislature of the State of Washington in its 1957 Session (which convened just two months after the adoption of Initiative No. 199) in effect nullified that initiative by enacting an entirely new apportionment of the state. In its opinion of December 13, 1962, the trial court in this case described that legislative enactment in these words:

> "In 1956, the voters of the State by initiative successfully provided for reapportionment, but in 1957 the Legislature amended the initiative to such an extent that it substantially reestablished the apportionment existing prior to the adoption of the initiative."

6. This action was commenced upon June 6, 1962.

7. The trial of this cause was set down for the 30th day of November, 1962, following the November general election. On the ballot at that election was Initiative No. 211, another apportionment initiative proposed by appellee League of Women Voters of Washington, Inc. The initiative measure was defeated at the polls on November 6, 1962.

8. After the trial of this cause the trial court found that the apportionment statutes of the State of Washington were invidiously discriminatory but deferred final action in order to give to the Washington State Legislature the opportunity at its 1963 Session to reapportion the States constitutionally. The court stated in its opinion of December 13, 1962:

> "Believing, as we do, that redistricting should be accomplished by the body constitutionally responsible therefor and that the sins of the fathers

should not be visited upon the sons, we are deferring final action to afford it the opportunity of discharging its constitutional mandate. If it fails, we, ever conscious of our oath to uphold the Constitution of the United States, will unhesitatingly take appropriate action to correct the inequity. Having so said, the matter is continued until April 8, 1963, for further hearing."

9. After a regular and a special session in 1963 the Legislature adjourned without having enacted any redistricting legislation.

Since the 1960 Federal census, therefore, both the people and the legislature of the State of Washington have had the opportunity to reapportion the state in conformity with the 1960 population figures. This they have not done.

If, as appellant urges, too little time has elapsed since the passage of the 1957 apportionment statute for it to be declared unconstitutional, how much time must elapse before it can be declared unconstitutional? The Legislature of the State of Washington will have only three additional sessions—in 1965, 1967 and 1969—before the 1970 Federal census is taken. Is it necessary that the Washington Legislature fail in each of those three sessions to enact a new apportionment statute before the 1957 apportionment can be declared unconstitutional? If so, the 1970 census figures will then supersede the 1960 census, and entirely new factual determinations will have to be made in another court action.

The Washington Constitution itself requires that the legislature be reapportioned according to the number of inhabitants after each Federal census. The decree of

the court below is in effect but an enforcement of this requirement of the Washington Constitution.

D. Appellant's Fourth Question Presented

"Is an injunction against holding any legislative elections under existing apportionment statutes an appropriate equitable remedy for population disparities in some legislative districts, where the result may be a governmental hiatus or an at-large election so cumbersome as to defeat any intelligent voter selection of members of the legislature?"

This is an *in terrorem* argument. It ignores the obvious solution to the entire problem, the calling of a special session of the Washington State Legislature to district the State of Washington in accordance with the Constitution of the State of Washington and the Constitution of the United States of America. A similar argument in a reapportionment case was made and rejected by the Maryland Supreme Court in *Maryland Commission for Fair Representation v. Tawes*, 228 Md. 412, 180 A.(2d) 656 (1962).

This question implies that the present apportionment statute should not be declared unconstitutional because there is the possibility that the Washington Legislature might fail to enact a constitutional apportionment statute in time for the general elections in 1964. This is to argue that the court *should* stay its hand because the legislature *may* stay its hand.

The legislature of the State of Washington has the power to avoid the twin spectres conjured up by appellant. Appellant cannot be heard to urge that the citi-

zens of the State of Washington must continue to live with an unconstitutional apportionment statute simply because there is no assurance that their legislature will exercise the power which it has.

It is true, of course, that it would be more convenient for the state and its legislature if the unconstitutionality of its apportionment statute were simply ignored. That would remove from the legislature the difficult and arduous task of enacting a constitutional apportionment statute. But convenience has never been, nor can it be, a proper criterion for determining whether a statute denies equal protection of the laws to a citizen.

It is to be noted that the trial court has not ordered elections at large. The trial court has simply declared the present apportionment statute to be unconstitutional. The remedy is left to the state.

E. Appellant's Fifth Question Presented

> "Where a state constitution is interpreted by its Supreme Court allows substantial variations as to population of districts from which members of the state legislature are elected, including different standards for representation as between the Senate and the House of Representatives, are state laws and constitutional provisions relative to apportionment void as in violation of the equal protection clause of the 14th Amendment of the Federal Constitution merely upon a showing of numerical disparity in some legislative districts?"

This question is repetitive of appellant's first asserted question.

It is true that exact numerical equality among legis-

lative districts is not required by the equal protection clause. Since *Baker v. Carr,* however, the supreme law of the land is that such gross inequalities as exist under the present apportionment statute of the State of Washington are violative of the 14th Amendment to the United States Constitution. As Mr. Justice Douglas stated in *Gray v. Sanders,* 9 L.ed.(2d) 821, 83 Sup. Ct. 801 (1963):

> "As we stated in *Gomillion v. Lightfoot, supra* (364 U.S. p. 347):
>
> "'When a state exercises power wholly within the domain of state interest, it is insulated from Federal Judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.'"

F. Appellant's Sixth Question Presented

> "What, if any, limits exist as to the extent of federal court supervision over actions by a state to apportion representation in its legislature?"

By reason of the fact that the court below retained jurisdiction of this cause and noted the same down for further hearing upon the 4th day of May, 1964, appellant argues that the court below is exercising unwarranted control over the elective process in the State of Washington.

In this uncharted sea, it is only natural that the court below should proceed cautiously. It has done so. As noted above, the court set the trial of this cause for a date subsequent to the general elections in the State of Washington in November of 1962 in order that the peo-

ple of the state might have the opportunity to vote upon a reapportionment initiative. Following the trial of this cause, the court did not enter a decree until the legislature of the State of Washington had the opportunity to enact a new apportionment statute. The decree entered by the trial court went no further than to declare the present apportionment statute unconstitutional and to enjoin the Secretary of State from conducting any election under the present and past apportionment statutes.

Certainly, the trial court had the power to retain jurisdiction of this cause and to have a further hearing on May 4, 1964. It had that power, if for no other reason, in order to inquire as to whether its decree was being complied with by appellant.

CONCLUSION

We respectfully submit, therefore, that this appeal presents no substantial question for the decision of this Court and that the judgment and decree of the District Court should be affirmed.

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Appendix

A

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON NORTHERN DIVISION

PRE-TRIAL ORDER

JAMES THIGPEN, *Plaintiff,*

vs.

VICTOR A. MEYERS, Secretary of State of the State of Washington, JOHN O'CONNELL, Attorney General of the State of Washington; ROBERT MORRIS, Auditor of King County, Washington; and CHARLES CARROLL, Prosecuting Attorney of King County, Washington, *Defendants,*

LEAGUE OF WOMEN VOTERS OF WASHINGTON, *Intervenor.*

No. 5597

As a result of pre-trial conference heretofore had, whereat the plaintiff was represented by M. L. Borawick of Parker & Borawick, his attorneys of record, and the defendant Victor A. Meyers and John O'Connell by Philip Austin, Assistant Attorney General, and the defendant Robert Morris by William Paul, Jr., Assistant King County Prosecuting Attorney, and the League of Women Voters of Washington by Donald Voorhees, Esq., of Riddell, Williams, Voorhees, Ivie & Bullitt, its attorneys of record, the following issues of fact and law were framed and exhibits identified:

Jurisdiction

1. Jurisdiction is vested in this Court, by virtue of: The allegations in the Complaint of the plaintiff alleging the apportionment of the State legislative districts

and the United States congressional districts in the State of Washington are arbitrarily and capriciously apportioned and that the plaintiff and all others similarly situated has had his vote debased by the legislature of the State of Washington, and is therefore deprived of equal protection under the law, as guaranteed by the 14th Amendment to the United States Constitution; jurisdiction is further vested in this Court by Title 28, U.S. Code, Sec. 1343 (3), entitled 28 U.S.C.A., Sec. 1343 (3).

Admitted Facts

2. The following facts are admitted by the parties:

(1) That the plaintiff, James Thigpen, is a citizen of the United States of America and of the State of Washington, and at the time of filing of this action was and now is a resident of the Midway Precinct, King County, which precinct is in the 30th state legislative district and in the 7th congressional district. That plaintiff is a registered voter.

(2) That the defendant Victor A. Meyers is the duly elected, qualified and acting Secretary of State of the State of Washington, and is charged under the laws of the State of Washington, as chief election officer of the State of Washington, with the duty of keeping records of all state elections, making rules and regulations to facilitate the orderly execution of state election laws, of accepting declarations of candidacy and filing said declarations for the United States House of Representatives and for the State Senate and the State House of Representatives in districts which comprise more than one county, and further being charged with the duty of transmitting to the County Auditor of each county in the State of Washington a list of candidates for state and federal offices to be voted on in each primary election, of certifying to each county auditor in

the State of Washington the names and places of residence of each person nominated for state office, and of issuing certificates of election to those persons who are elected to the state legislature from legislative districts comprising more than one county.

(3) That the defendant John O'Connell is the duly elected, qualified and acting Attorney General of the State of Washington.

(4) That the defendant Robert A. Morris is the duly elected, qualified and acting Auditor of King County, Washington; that under the provisions of the laws of the State of Washington, said Robert A. Morris has the duty of publishing notice of primary elections within King County, of publishing notice of general elections for state offices within King County, of accepting declarations of candidacy for the state legislature in districts lying within King County, of mailing absentee ballots for the offices of the United States House of Representatives and the State Legislature to absent voters within King County and of notifying elected members of the State Legislature from King County legislative districts of their election and issuing to them, on demand, certificates of election.

(5) That the population of the State of Washington, according to the 1960 federal census, is 2,824,177 persons.

(6) That the populations of the seven congressional districts in the State of Washington in the 1960 census are as follows:

1st Congressional District, 420,548
2nd Congressional District, 366,395
3rd Congressional District, 342,540
4th Congressional District, 414,764
5th Congressional District, 399,093

6th Congressional District, 370,325
7th Congressional District, 510,512

(7) That the population, according to the 1960 census, of the legislative districts in the State of Washington, is as follows:

Dist. No.	*Dist. Area*	*1960 Pop.*	*Representatives per Dist.*	*Senators per Dist.*
1	Douglas and Okanogan	40,410	2	1
2	Pend Oreille and Stevens	24,798	2	1
3	Spokane, part	45,397	2	1
4	Spokane, part	68,262	2	1
5	Spokane, part	93,475	2	1
6	Spokane, part	37,837	2	1
7	Spokane, part	33,362	2	1
8	Adams, Ferry, Lincoln	24,737	1	1
9	Whitman	31,263	2	1
10	Asotin, Columbia, Garfield	20,454	1	1
11	Walla Walla	42,195	2	1
12	Chelan	40,744	2	1
13	Grant, Kittitas	66,944	2	1
14	Yakima, part	74,299	3	1
15	Yakima, part	70,813	2	1
16	Benton, Franklin	85,412	2	1
17	Clark, part, Klickitat	43,896	1	1
18	Cowlitz, Wahkiakum	61,227	2	1
19	Grays Harbor, part, Pacific	20,023	1	1
20	Lewis	41,858	2	1
21	Grays Harbor (except 19 pcts.)	49,116	2	1
22	Thurston	55,049	2	1
23	Kitsap	84,176	3	1
24	Clallam, Jefferson, Mason	55,912	3	1
25	Pierce, part	59,510	2	1
26	Pierce, part	50,065	2	1

Dist. No.	Dist. Area	1960 Pop.	Representatives per Dist.	Senators per Dist.
27	Pierce, part	45,272	2	1
28	Pierce, part	64,715	2	1
29	Pierce, part	72,991	2	1
30	King, part	95,673	2	1
31	King, part	145,180	3	1
32	King, part	45,121	2	1
33	King, part	52,798	2	1
34	King, part	57,059	2	1
35	King, part	30,470	2	1
36	King, part	46,164	2	1
37	King, part	38,800	2	1
38	Island, part; Snohomish, part	140,023	3	1
39	Island, part; Snohomish, part	51,814	2	1
40	San Juan, Skagit	54,222	2	1
41	Whatcom, part	35,629	1	1
42	Whatcom, part	34,688	2	1
43	King, part	40,752	2	1
44	King, part	58,990	2	1
45	King, part	70,288	2	1
46	King, part	67,338	2	1
47	King, part	71,084	2	1
48	King, part	115,297	2	1
49	Clark, part	68,575	3	1

(8) The legislative authority of the State of Washington is vested in the State Senate and in the State House of Representatives by Article II of the Washington State Constitution, as amended by the 7th Amendment to the Washington State Constitution. The pertinent provisions of the State Constitution are:

"ARTICLE II, Section 1. LEGISLATIVE POWERS, WHERE VESTED. The legislative powers shall be

vested in a senate and a house of representatives, which shall be called the legislature of the State of Washington." (1889)

AMENDMENT 7. Article II was amended by striking all of sections 1 and 31, and inserting in lieu thereof as Section 1 the following, so that the same shall read as follows:

"ARTICLE II, Section 1. LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the State of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature." (1909, p. 642, Sec. 1. Approved November, 1910.)

(9) The composition of the Washington State Legislature is provided for by Article II, Section 2 of the Washington State Constitution which states:

"ARTICLE II, Section 2. HOUSE OF REPRESENTATIVES AND SENATE. The house of representatives shall be composed of not less than sixty-three nor more than ninety-nine members. The number of senators shall not be more than one-half nor less than one-third of the number of members of the House of Representatives." (1889)

(10) The reapportionment of the Washington State Legislature is provided for in Article II, Section 3 of the Washington State Constitution which provides:

"ARTICE II, Section 3. THE CENSUS. The legisla-

ture shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and ninety-five and every ten years thereafter; and *at the first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants,* excluding Indians not taxed, soldiers, sailors and officers of the United States army and navy in active service." (1889)

(11) The only provision in the Washington State Constitution respecting territory to be contained in a state legislative district is contained in Article II, Section 6, which states:

"ARTICLE II, Section 6. ELECTION AND TERM OF OFFICE OF SENATORS. After the first election the senators shall be elected by single districts of convenient and contiguous territory, at the same time and in the same manner as members of the house of representatives are required to be elected; and no representative district shall be divided in the formation of a senatorial district . . ." (1889)

(12) The Washington State Legislature is presently composed of 99 representatives and 49 senators from 49 legislative districts in the State of Washington. The definition of the boundaries of these 49 legislative districts and the number of representatives and senators to which each is entitled is set forth in the following laws of the State of Washington:

Laws of 1957, Chapter 289, Sections 1 through 53, inclusive;

Laws of 1957, Chapter 5, Sections 1 through 53, inclusive.

Revised Code of Washington, Chapter 44.06.010 through 44.06.530, inclusive.

(13) The history of reapportionment and redistricting of the Washington State Legislature following the enactment of the State Constitution in 1889 commenced in 1890 and 1901 when redistricting and apportionment acts were passed by the State Legislature. These acts were passed to complete the partially finished districting and apportionment in effect when the State Constitution was ratified in 1889. In neither act did the State Legislature conform to Article II, Section 3, of the State Constitution providing for apportionment and districting "according to the number of inhabitants," since at least one representative was given to each county in Washington State under the Act of 1901, regardless of population.

Since 1901, the Washington State Legislature has not reapportioned or redistricted the State Legislature of its own volition.

In 1930, Initiative Measure No. 57 was adopted at the November election. It provided for an increase in state senators from 42 to 46. The number of representatives was increased from 97 to 99. It also made the representative district boundaries coincide with senatorial district boundaries and gave each legislative district a minimum of 2 representatives.

In 1956, Initiative Measure No. 199 was passed at the November election. In the State Legislature session of 1957, Substitute SB 374 (Chapter 289, Laws of 1957) amended Initiative No. 199. This bill was passed by the Legislature. It created 3 new legislative districts, 47, 48 and 49.

The constitutionality of this act was questioned in *State ex rel. O'Connell v. Meyers*, 51 Wn.(2d) 454, 319

P.(2d) 828 (1957). The basis of the attack was the disproportionateness of the population of the various districts created by the act which, according to the Relator, violated Article II, Section 3, of the Washington State Constitution. The Washington State Supreme Court, per Justice Ott, held that the Relator failed to prove disproportionateness of population of the various districts, that the Supreme Court, while it could take judicial notice of the 1950 federal census, could not take judicial notice of the 1950 population of the legislative districts and that, therefore, the Court had to presume the State Legislature performed its duty in establishing the districts according to law, *i.e.,* Article II, Section 3, of the Constitution.

In 1962, Initiative Measure No. 211, which sought to redistrict the State Legislative Districts according to population shown by the 1960 Federal census, was defeated in the November 6th election.

(14) Article I, Section 3, of the United States Constitution provides:

> "The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the places of choosing senators."

(15) The State of Washington, because of its population, is entitled to 7 Representatives in the Congress.

(16) The district boundaries of each of the 7 congressional districts in the United States House of Representatives are defined by the following statutes of the State of Washington:

1st District—Chapter 149, Sec. 2, Laws of 1957; RCW 29.68.011;

2nd District—Chapter 149, Sec. 3, Laws of 1957; RCW 29.68.021;

3rd District—Chapter 28, Sec. 3, Laws of 1931; RCW 29.68.030; RRS Sec. 3794;

4th District—Chapter 28, Sec. 4, Laws of 1931, RCW 29.68.040; RRS Sec. 3795;

5th District—Chapter 28, Sec. 5; Laws of 1931; RCW 29.68.050; RRS Sec. 3796;

6th District—Chapter 288, Sec. 2, Laws of 1959; RCW 29.68.062;

7th District—Chapter 288, Sec. 3, Laws of 1959; RCW 29.68.066.

(17) Based on the 1960 Federal census, which shows the total Washington state population to be 2,824,177 persons, if each legislative district had exactly the same population as every other legislative district, then the number of persons per state representative would be 28,527.

Twenty-four legislative districts containing 1,086,924 persons, or 38.0% of the total state population, have 51 of the 99 votes in the State House. These districts are: 1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 14th, 19th, 20th, 21st, 24th, 26th, 27th, 32nd, 33rd, 35th, 39th, 42nd, 43rd and 49th. (Attorney General objects to the relevancy of this comparison.)

The 1960 population of the 30th legislative district is 95,673. It has 2 state representatives, or 47,836 per representative.

The 1960 population of the 2nd legislative district is 24,798. It has 2 state representatives, or 12,399 persons per representative.

Comparing the vote of plaintiff in the 30th legislative district to that of an individual in the 2nd legisla-

tive district for the State House of Representatives, plaintiff has a 25.7% vote value, while the voter in the 2nd district has a vote value of 3.88 times plaintiff's.

The 1960 population of the 35th legislative district is 30,470. It has 2 state representatives, or 15,236 per representative.

Comparing the vote of plaintiff in the 30th legislative district to that of an individual in the 35th legislative district (central Seattle), plaintiff has 31.8% vote value, while the voter in the 35th district has a vote value of 3.14 that of plaintiff.

The population of the 48th legislative district (Northeast King County) according to the 1960 census, is 115,297 persons. It has 2 State Representatives, or 57,648 persons per representative.

Comparing the value of an individual's vote in the 48th district with the vote of an individual in the 2nd legislative district, the vote in the 48th district has 21.3% of the value, while the voter in the 2nd legislative district has a vote value of 4.69 times that of the individual in the 48th district.

(18) Based on the 1960 Federal census, which shows the total Washington state population to be 2,824,177 persons, if each legislative district had exactly the same population as every other legislative district, then the number of persons per state senator would be 57,636 persons.

(19) Taking 25 of the most over-represented legislative districts in the State Senate, 35.6% of the total state population, or 1,008,415 persons have a majority in the State Senate. These districts are: 1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 17th, 19th, 20th, 21st, 26th, 27th, 32nd, 33rd 35th, 36th, 37th, 39th, 41st, 42nd

and 43rd. (The Attorney General objects to the relevancy of this comparison.)

(20) The population of plaintiff's legislative district in South King County is 95,673 and it is entitled to 1 State Senator. The 19th legislative district, composed of Grays Harbor County and a portion of Pacific County, has a total population according to the 1960 census, of 20,023 persons. Comparing the value of plaintiff's vote to that of an individual in the 19th district, plaintiff's vote has 20.9% of the value, while the voter in the 19th district has a vote value of 4.68 times that of plaintiff.

The population of the 38th legislative district, composed of a portion of Island and a portion of Snohomish Counties, is 140,023 persons, according to the 1960 census. Comparing the value of a voter in the 38th district to that of a voter in the 19th district, the value of the 38th district vote is only 14.2%, while the value of the 19th district vote is 7 times the value of the 38th district vote.

The population of the 31st district (Southwest King County), is 145,180 persons, according to the 1960 census, and it is entitled to 1 State Senator. Comparing the value of an individual vote in the 31st district to the 19th district, the value of the 31st district vote is 13.8% of the value of the 19th district vote, while the value of the 19th district vote is 7.25 times the value of the 38th district vote.

The populaion of the 10th legislative district (Asotin, Columbia and Garfield Counties) is 20,454 persons, according to the 1960 census. Comparing the value of an individual vote in the 31st district to the 10th district, the value of the 31st district vote is 13.9% of the value of the 10th district vote, while the value of the

10th district vote is 7.11 times that of the 1st district vote.

(21) Based on the 1960 Federal census, which shows the total Washington state population to be 2,824,177 persons, if each congressional district had exactly the same population as every other congressional district, then the number of persons per congressional district would be 403,311 persons. Compared to this population figure, the 1st Congressional district is over by 17,273 persons, the 2nd congressional district is under by 36,916 persons, the 3rd congressional district is under by 60,711 persons, the 4th congressional district is over by 11,453 persons, the 5th congressional district is under by 4,218 persons, the 6th congressional district is under by 32,968 persons, and the 7th congressional district is over by 108,201 persons, according to the 1960 federal census.

(22) The following is a table showing the value of the individual vote for the United States House of Representatives in the 7th congressional districts to the other districts:

7th compared to 3rd—67%	3rd compared to 7th—150%
7th compared to 2nd—71%	2nd compared to 7th—140%
7th compared to 6th—72%	6th compared to 7th—138%
7th compared to 5th—78%	5th compared to 7th—128%
7th compared to 4th—81%	4th compared to 7th—123%
7th compared to 1st—82%	1st compared to 7th—121%

(23) The 1960 Federal census figures were not available to the Washington State Legislature until February, 1961.

(24) Each of the exhibits attached to this Order and made a part hereof is an accurate representation of what it purports to depict. These exhibits are:

1. A circle chart comparing the six congressional districts in the State of Washington to the 7th congressional district.

2. A circle chart comparing the vote of an individual in the 30th legislative district; for the State Senate to certain other legislative districts in the State of Washington.

3. A circle chart comparing the vote of an individual in the 30th legislative district for the State House of Representatives to certain other legislative districts in the State of Washington.

4. A population study based on the 1960 federal census of the State legislative districts, made by the Washington State Secretary of State.

5. A map showing the boundaries of the legislative districts in the State of Washington, together with the population in each district and the principal economic activities in each district.

6. A map showing the boundaries of the congressional districts in the State of Washington.

7. A comparison table of legislative districts.

Issues of Law

6. The following are the issues of law to be determined by the Court:

(1) Does so much of the complaint as alleges the unconstitutionality of statutes of the state of Washington relating to apportionment and districting of representation in the United States House of Representatives state a justiciable claim, in view of *Colgrove v. Green*, 328 U.S. 599, 90 L.Ed. 1432, 66 S.Ct. 1198 (1945)?

(2) Does so much of the complaint as alleges the unconstitutionality of statutes of the state of Washing-

ton relating to apportionment and districting of the state legislature assert a justiciable claim, inasmuch as an initiative containing proposed changes in said laws was disapproved by a substantial majority of the voters of the state of Washington at the November 6, 1962, general state election?

(3) Is the present districting and apportionment of the Congressional Districts in the state of Washington unconstitutional, in whole or in part, on the ground that it is in violation of the 14th Amendment to the Constitution of the United States of America?

(4) Is the present districting and apportionment of the Washington State Legislature unconstitutional, in whole or in part, on the ground that it is in violation of the 14th Amendment to the Constitution of the United States of America?

(5) If the present districting and apportionment of the Congressional Districts in the state of Washington is unconstitutional, in whole or in part, what is the proper remedy to grant plaintiff?

(6) If the present districting and apportionment of the Washington State Legislature is unconstitutional, in whole or in part, what is the proper remedy to grant plaintiff?

Expert Witnesses

7. None.

Other Witnesses

8. The names of witnesses, other than experts, to be used by each party at the time of trial are: None.

Exhibits

9. (a) See item (25) of agreed facts, *supra*.

(b) Official final tabulation of votes on Initiative 211 at the November, 1962, general election, including a county by county breakdown.

Action by the Court

10. The Court has ruled that:

(a) Trial briefs shall be submitted to the Court on or before November 16, 1962.

(b) 1. This action is to be heard on November 27, 1962, before a three-Judge United States District Court convened in accordance with the provisions of 28 U.S.C.A., Sec. 2281, and 28 U.S.C.A., Sec. 2284.

2. The Motion of the defendants Secretary of State and Attorney General of the state of Washington to dismiss the Complaint on the grounds that it fails to state a claim was denied.

3. The Motion of plaintiff for an Interlocutory Injunction was denied.

4. The Motion of plaintiff to amend his Complaint to pray that the Court declare null and void and inoperative for all future elections those laws of the state of Washington which define the boundaries and apportion the Washington State Legislature; and those laws of the state of Washington which define the boundaries of the Congressional Districts, was granted.

5. The respective issues of alleged Congressional malapportionment and alleged malapportionment of the state legislature are to be deemed separate and distinct issues.

6. In accordance with agreement of all of the parties, this order may be signed and executed solely by

e undersigned United States district judge on be-
lf of the court.

Dated this 16th day of November, 1962.

WILLIAM T. BEEKS
UNITED STATES DISTRICT JUDGE

EXHIBIT 7A

Number of Voters Per State Senator in Each Legislative District

(Each Legislative District Has One Senator)

District Area	*1960 Population*	*Percentage Over or Under 57,636 voters per Senator*
King, part	145,180	+152%
Island, part; Snohomish, part	140,023	+143
King, part	115,297	+100
King, part	95,673	+66
Spokane, part	93,475	+62
Benton, Franklin	85,412	+48
Kitsap	84,176	+46
Yakima, part	74,299	+29
Pierce, part	72,991	+27
King, part	71,084	+23
Yakima, part	70,813	+23
King, part	70,288	+22
Clark, part	68,575	+19
Spokane, part	68,262	+18
King, part	67,338	+17
Grant, Kittitas	66,944	+16
Pierce, part	64,715	+12
Cowlitz, Wahkiakum	61,227	+6
Pierce, part	59,510	+3
King, part	58,990	+2
King, part	57,059	—1
Clallam, Jefferson, Mason	55,912	—3

District No.	*District Area*	*1960 Population*	*Percentage Over or Under 57,636 voters per Senator*
22	Thurston	55,049	—5
40	San Juan, Skagit	54,222	—6
33	King, part	52,798	—8
39	Island, part; Snohomish, part	51,814	—10
26	Pierce, part	50,065	—13
21	Grays Harbor (except 19 pcts.)	49,116	—15
36	King, part	46,164	—20
3	Spokane, part	45,397	—21
27	Pierce, part	45,272	—21
32	King, part	45,121	—22
17	Clark, part; Klickitat	43,896	—24
11	Walla Walla	42,195	—26
20	Lewis	41,858	—27
43	King, part	40,752	—29
12	Chelan	40,744	—29
1	Douglas and Okanogan	40,410	—30
37	King, part	38,800	—33
6	Spokane, part	37,837	—34
41	Whatcom, part	35,629	—38
42	Whatcom, part	34,688	—40
7	Spokane, part	33,362	—42
9	Whitman	31,263	—46
35	King, part	30,470	—47
2	Pend Oreille and Stevens	24,798	—57
8	Adams, Ferry, Lincoln	24,737	—57
10	Asotin, Columbia, Garfield	20,454	—64
19	Grays Harbor, part; Pacific	20,023	—65

EXHIBIT 7B

Number of Voters Per Representative in Each Legislative District

(Each Legislative District Has One Representative Unless Otherwise Indicated)

District No.	*District Area*	*1960 Population per Representative*	*Percentage Over or Under 28,527 Voters per Representative*
48	King, part	57,648	+102%
31	King, part***	48,393	+70
30	King, part	47,836	+68
5	Spokane, part	46,737	+64
38	Island, part;*** Snohomish, part	46,674	+64
17	Clark, part, Klickitat	43,896	+54
16	Benton, Franklin	42,706	+50
29	Pierce, part	36,495	+28
41	Whatcom, part*	35,629	+25
47	King, part	35,542	+24
15	Yakima, part	35,406	+24
45	King, part	35,144	+23
4	Spokane, part	34,131	+20
46	King, part	33,669	+18
13	Grant, Kittitas	33,472	+17
28	Pierce, part	32,357	+13
18	Cowlitz, Wahkiakum	30,613	+7
25	Pierce, part	29,755	+4
44	King, part	29,495	+4
34	King, part	28,529	0
23	Kitsap***	28,059	—1
22	Thurston	27,524	—4
40	San Juan, Skagit	27,111	—5
33	King, part	26,399	—7
39	Island, part; Snohomish, part	25,907	—9
26	Pierce, part	25,032	—12
14	Yakima, part***	24,766	—13

District No.	*District Area*	*1960 Population per Representative*	*Percentage Over or Under 28,527 Voters per Representative*
8	Adams, Ferry, Lincoln*	24,737	—13
21	Grays Harbor (except 19 pcts.)	24,558	—14
36	King, part	23,082	—19
49	Clark, part***	22,858	—20
3	Spokane, part	22,698	—20
27	Pierce, part	22,636	—21
32	King, part	22,560	—21
11	Walla Walla	21,097	—26
20	Lewis	20,929	—27
10	Asotin, Columbia, Garfield*	20,454	—28
43	King, part	20,376	—28
12	Chelan	20,372	—29
1	Douglas and Okanogan	20,205	—29
19	Grays Harbor, part, Pacific*	20,023	—30
37	King, part	19,400	—32
6	Spokane, part	18,918	—34
24	Clallam, Jefferson, Mason***	18,637	—35
42	Whatcom, part	17,344	—39
7	Spokane, part	16,681	—41
9	Whitman	15,631	—45
35	King, part	15,235	—47
2	Pend Oreille and Stevens	12,399	—57

***Three representatives
*One representative

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1963

No. 381

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v.

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APPEAL FROM THE SPECIAL THREE-JUDGE COURT CONVENED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

RESPONSE TO MOTION TO AFFIRM

JOHN J. O'CONNELL,
Attorney General of the State of Washington,

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INDEX

Page

I STATEMENT OF THE CASE 5

II RESPONSIVE ARGUMENT 6

A. Is Numerical Disparity the Sole Subject of Inquiry? 6

B. The Effect of Initiative and Referendum on the Issue of Invidious Discrimination Should be Carefully Examined 9

C. Population Shifts Should not Make an Apportionment Statute Unconstitutional Instanter 12

D. Is Governmental Chaos a Proper Equitable Remedy? 14

E. There Must be Limits on the Court's Supervision over Apportionment in the State Legislature 16

TABLE OF CASES

Baker v. Car, 369 U. S. 186, 7 L. Ed. (2d) 663 ..... 7, 8

Colegrove v. Green, 328 U. S. 549, 90 L. Ed. 1432 15

Ferguson v. Skupra, 372 U. S. 726, 10 L. Ed. (2d) 9[illegible] 6-7

Lisco v. Love, D. C. District of Colorado (July 16, 1963), 32 Law Week 2076 11

Marquez v. Aviles, 252 F. (2d) 715, Cert. Denied 356 U. S. 952, 2 L. Ed. (2d) 845 7

McDougall v. Green, 335 U. S. 281, 93 L. Ed. 3 8

Morey v. Doud, 354 U. S. 457, 1 L. Ed. (2d) 485 8

Nolan v. Rhodes, D. C. Southern District of Ohio (June 12, 1963), 31 Law Week 2641 10-11

St. Louis Union Trust Co. v. State, 348 Mo. 725, 155 S. W. (2d) 107, Cert. Denied 314 U. S. 700, 86 L. Ed. 560 7-8

WASHINGTON INITIATIVE MEASURES

Initiative Measure No. 57; Ch. 2, Laws of Wash. 1931 10

Initiative Measure No. 199; Ch. 5, Laws of Wash. 1957 .. 10

Initiative Measure No. 211 10

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STATEMENT OF THE CASE

The facts pertinent to this appeal are set forth in the Jurisdictional Statement heretofore filed by appellant.

II

RESPONSIVE ARGUMENT

A. Is Numerical Disparity the Sole Subject of Inquiry?

Appellees, in their Motion to Affirm, base their argument solely, as they did in the case below, upon numerical disparity in the population of some districts from which legislators are selected. They particularly emphasize disparity in senatorial districts as distinguished from representative districts, and apparently assume that proof of numbers is the sole inquiry in determining whether equal protection of the law has been denied. The lower court apparently took the same attitude and permitted no proof in explanation or justification of the existing apportionment.

The first proposition raised by this appeal, namely: *Does numerical disparity in population of some districts from which members of the state legislature are elected without any other showing of discrimination, violate the equal protection clause of the 14th Amendment of the Federal Constitution so as to invalidate all state apportionment laws?* presents an important and as yet undecided question of great public interest. This court has repeatedly held that only "invidious discrimination" violates the equal protection clause of the 14th Amendment of the Federal Constitution. This court most recently reiterated that long-standing principle in *Ferguson*

v. Skupra, 372 U. S. 726, 10 L. Ed. (2d) 93. Up to this time, this court has never held that numbers alone without any other factor and without any opportunity to explain or justify numerical disparity would establish invidious discrimination in apportionment of legislative representation. In the milestone case of *Baker v. Carr*, 369 U. S. 186, 7 L. Ed. (2d) 663, Mr. Justice Douglas in his concurring opinion said:

> "The traditional test for the equal protection clause has been whether a state has made 'an invidious discrimination' as it does when it selects a 'particular race or nationality for oppressive treatment'. See *Skinner v. Oklahoma*, 316 U. S. 535, 541. Universal equality is not the test; there is room for weighting. As we stated in *Williamson v. Lee Optical Co.*, 348 U. S. 483, 489, 'the prohibition of the equal protection clause goes no further than the invidious discrimination.'"

We have here a case where the lower court expressly finds in the opening language of its opinion (see Appendix B of the Jurisdictional Statement) that this is a problem created by population growth, yet with no showing of any intention to discriminate against any race, minority or group. The lower court found the equal protection clause of the 14th Amendment violated by a mere showing of numbers. The equal protection clause has repeatedly been held to be violated only by *purposeful discrimination* with no rational basis, *Marquez v. Aviles*, 252 F. (2d) 715, Cert. Denied 356 U. S. 952, 2 L. Ed. (2d) 845; *St. Louis Union Trust Co. v. State*, 348 Mo. 725, 155

S. W. (2d) 107, Cert. Denied 314 U. S. 700, 86 L. Ed. 560; *Morey v. Doud*, 354 U. S. 457, 1 L. Ed. (2d) 485.

Appellees, in their argument, cite from the pre-trial order the greatest extremes of disparity in population, but nowhere is there any evidence admitted or before the court to show whether rapid changes in population brought these situations about, whether considerations of geography, economics, mass media, and functional or group voting strength justify any of the differences, and the court declined to hear even an offer of proof to supplement the purely statistical data regarding numbers contained in the pre-trial order. Thus, it is recited in the decree appealed from (see Appendix A of the Jurisdictional Statement):

> "The Special Assistant Attorney General, having made an offer of proof for the record and said oral offer of proof having been refused by the court * * *."

This court did not, in *Baker v. Carr*, 369 U. S. 186, 7 L. Ed. (2d) 663, say that proof of numbers alone made out a case of invidious discrimination to invoke the authority of the federal courts to invalidate state laws, but this court, on the other hand, did hold in *McDougall v. Green*, 335 U. S. 281, 93 L. Ed. 3, that political power is not exclusively a matter of numbers. That case was not overruled by this court in any subsequent decision, but, on the contrary, Mr. Justice Stewart in his concurring opinion in *Baker v. Carr, supra*, said:

> "In *McDougall v. Green*, 335 U. S. 281, the court held that the equal protection clause does

not 'deny a state power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former,' 335 U. S. at 284. In case after case arising out of the equal protection clause the court has said what it said again only last term —that 'the 14th Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others,' *McGowan v. Maryland*, 366 U. S. 420, 425. In case after case arising under that clause we have also said that 'the burden of establishing the unconstitutionality of a statute rest on him who assails it,' *Metropolitan Casualty Co. v. Brownell*, 294 U. S. 580, 584. Today's decision does not turn its back on these settled precedents."

This court should give plenary consideration to the first question raised by our appeal, namely, *Whether numbers alone without any other consideration or any other proof of invidiousness make such a case of denial of equal protection as to invoke, without more, the extraordinary powers of the federal courts to void state reapportionment statutes?*

B. The Effect of Initiative and Referendum on the Issue of Invidious Discrimination Should be Carefully Examined.

In Washington, initiative and referendum not only are available to the people, but for purposes of reapportioning the legislature, have been repeatedly resorted to. The procedure of initiative in which every person's vote throughout the state is equal

to that of every other person, is not, in Washington, an illusory remedy but is a very real one. The apportionment of the legislature in 1930 was accomplished by Initiative Measure No. 57, Chapter 2, Laws of 1931 of the State of Washington. In 1956, Initiative Measure No. 199, Chapter 5, Laws of 1957 of the State of Washington, again apportioned the state. In 1962, Initiative Measure No. 211 got on the ballot and the voters had an opportunity again to vote on the reapportionment. Apparently the voters did not like the form of reapportionment last attempted, but these facts, which are recognized in the lower court's opinion, show that it is no idle contention that the people have the right directly to apportion the state for legislative purposes. This is the way legislative apportionment has been done in the State of Washington and can be done again.

Counsel for appellees undertake to argue that due to stringent requirements for placing an initiative measure on the ballot, the power of initiative is no remedy at all. This simply ignores the facts, which are that the initiative in Washington is a viable and active means of legislating. At least one federal three-judge court has held recently that the right of the people to extricate themselves from any situation of inadequate representation is a sufficient answer to a claim that the equal protection clause is violated where legislative apportionment is not on a basis of mathematical equality. In the case of *Nolan v. Rhodes*, decided by the three-judge court for the

Southern District of Ohio, on June 12, 1963, reported in 31 Law Week at p. 2641 the court sustained the Ohio apportionment plan whereby the Senate was apportioned by population and the House by area and population, and in arriving at this result gave substantial weight to the right of direct legislative action by the people, saying:

> "(Urban voters) complain about the practical difficulties of inducing Ohio's legislature to submit proposals to amend the constitution for a vote of the people or in securing signatures on initiative petitions. The fact is that in almost every state election there are proposals on the ballot to amend Ohio's constitution. The contention also overlooks the right of the people to vote for a constitutional convention every 20 years. We submit it ought not to be easy to amend or change the basic law of a state or nation. If the rule were otherwise, Ohio would be flooded with crackpot schemes, some of which today are being urged in respect to amending the Constitution of the United States."

That court gave considerable effect to the fact that the people of Ohio have the right of direct legislation. See also, *Lisco v. Love*, decided by a three-judge Federal District Court in Colorado on July 16, 1963 and reported in 32 Law Week at p. 2076. There the court rejected a contention that a state constitutional apportionment plan *adopted by popular vote* was invidiously discriminary, stating:

> "The contention that the voters have discriminated against themselves appalls rather than convinces."

In Washington, the right of direct legislation has probably been used more than anywhere else, and

there can be little doubt that at the next general election, as at the last, and virtually all of the others before that, there will be various measures on the ballot for the people to enact by direct legislation.

Counsel for appellees would have this court summarily dismiss the consideration of the effect of initiative and referendum, whereas this factor makes Washington far different from most of the other states where the question of legislative apportionment in the light of the 14th Amendment has been considered.

This court should consider this factor at length, and there is no other case for which jurisdiction has now been noted, to our knowledge, which gives consideration to the matter of initiative and referendum as a means of legislating and apportioning the state. The control of the means or manner of apportionment is an attribute of popular government not to be lightly usurped by the federal courts so long as the people of the state do have a real and effective means of protecting themselves by direct legislation.

C. Population Shifts Should Not Make an Apportionment Statute Unconstitutional Instanter.

Appellees, in their discussion of a third question presented, apparently argue that the decision of the lower court insofar as this question is concerned should be affirmed because of a provision in the Washington Constitution. It is not the function of the federal courts to enforce the Washington Con-

stitution, and the question presented really is whether a disparity in legislative representation makes an apportionment law unconstitutional *instanter* when a shift in population or some other factor brings it about. Appellees would have the court hold that a federal constitutional violation giving rise to invalidation of all state apportionment laws must arise as soon as the figures will show population discrepancies in legislative districts.

Under our form of state government, we submit that federal intervention under the due process clause is warranted only from *gross* neglect of the equal rights of the people. We submit that this court should examine carefully the question of *how soon* after a discrepancy in approximate equality of representation is detected a state must act. If a state legislature has difficulty in evolving a satisfactory formula attempted in good faith, are the federal courts going to immediately void everything that has gone before and throw the legislative election system into chaos?

This is a serious question and we believe it deserves serious consideration and clearly should not be disposed of without full briefs and argument. Nothing the court has said heretofore on the subject of apportionment has indicated that this is a matter for instant federal action. If five years of state legislative delay is enough to invoke the federal remedies, is the lapse of any time at all necessary whenever it is shown that legislative district populations are out of balance? We submit that this is too serious a question to be disposed of summarily.

D. Is Governmental Chaos a Proper Equitable Remedy?

In appellees' discussion of our fourth question, they asked for summary affirmance of the decision below because they say s lution of the entire problem is in calling the Washington legislature into special session. This overlooks the fact that the legislature has been called in special session and because of an unusual political deadlock was unable to agree. There is nothing in the record to indicate that another special session prior to an election which should break the deadlock will be any more productive than the last.

The government of a state is too important a thing to be thrown into chaos by the federal courts' invalidating all of the existing election statutes. This court has not laid down any guides as to the procedures of the federal courts in apportionment cases, but surely equity is not served by invoking remedies much worse than the disease. In other words, because plaintiff Thigpen feels that he is not being adequately represented, should we disenfranchise the whole population by imposing an utterly unworkable at-large election upon the population, whereby voters at a single election would be required to make 123 selections from a ballot containing from 1,000 to 3,000 names and the practicalities of the situation would make any intelligent voting impossible, or, in the alternative, the voters could be disenfranchised by having no elections at all?

In respect to congressional elections, this court has held that it would not leave a state undistricted,

see *Colegrove v. Green*, 328 U. S. 549, 90 L. Ed. 1432. The very reasons that impelled the court to hold it would not leave a state undistricted for congressional purposes, are true a hundredfold for the legislature, where the numbers are so great that the election becomes impractical.

There are alternative remedies. Thus, the 14th Amendment of the Federal Constitution provides in Section 5:

> "The Congress shall have power to enforce by appropriate legislation the provisions of this Article."

This provides an adequate avenue for remedying a situation of malapportionment which will not leave a governmental hiatus and will provide a political solution to the political question of how apportionment shall be accomplished if it is not taken care of by the state authorities. In the case of *Colegrove v. Green*, *supra*, this court indicated that because of a right of Congress to correct congressional malapportionment, the court would not undertake to accomplish it.

The consequences of the action in the lower court in this case are so grave in their effect upon the government of the State of Washington, that this matter of the remedy in the light of equitable principles should be thoroughly briefed and argued. The means of providing a political solution to the question of how legislative apportionment shall be accomplished is furnished through Section 5 of the 14th Amendment. We submit that Congress could

take action if that became necessary, but a state government is too important a thing for the courts to put its means of legislative election into suspension as a means of coercing the state and its people into reapportioning. That is not necessary. The 14th Amendment itself furnishes the remedy and unless the court is to invoke a remedy worse than the disease, something must be done other than the merely negative act of voiding all of the apportionment statutes on the books. In other words, something must be done to take the place of the statutes voided. We submit that the ramifications of the remedy must be thoroughly explored.

E. There Must Be Limits On the Court's Supervision Over Apportionment In the State Legislature.

Dealing with the sixth question raised in our Jurisdictional Statement, namely, *What if any limits exist as to the extent of federal court supervision over actions by a state to apportion representation in its legislature?* We concur with appellees that the court should proceed cautiously in this "uncharted sea." In this case, apparently the lower court intends to exercise an indefinite auditing position over whatever future legislation may be enacted on this subject. The court is getting out of the ordinary role of courts which should decide controversies between parties, and is going into a new field, that of supervising legislation. The court has retained jurisdiction notwithstanding that a final decree has been

made and it has voided all existing apportionment laws. The implication of the court's indefinite retention of jurisdiction is that the court from now on is going to stand as a vetoing agency over whatever the legislature does. It should be noted that it is not upon motion of any party that the court has retained jurisdiction, but the court evidently on its own motion intends from now on to audit whatever the legislative authority of the state does on this subject.

The concept of the federal court indefinitely retaining jurisdiction to supervise a state's legislation on a particular subject after it has disposed of the controversy before it by a final decree is something new in federal-state relationships. There should be some limits to judicial authority and this court should not by summary affirmance sanction the maintenance of a veto by the courts over state legislation, the contents of which are not now known and which are not involved in any controversy now apparent. The sixth question is indeed one that should be briefed and argued and decided only after thorough consideration.

Respectfully submitted,

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